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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,308	01/10/2001	Howard A. Fields	14114.0349U2	9952

23859 7590 03/26/2003

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127 PEACHTREE STREET N E  
ATLANTA, GA 30303-1811

EXAMINER
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LI, BAO Q

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 03/26/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/758,308

Applicant(s)

FIELDS ET AL.

Examiner

Bao Qun Li

Art Unit

1648

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 20 March 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

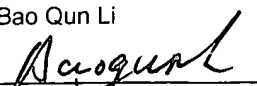
Claim(s) objected to: 9-13.

Claim(s) rejected: 7-13 and 26-31.

Claim(s) withdrawn from consideration: 1-6 and 14-25.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Bao Qun Li




Continuation of 2. NOTE: the amendment of claims 9-13, "wherein the mosaic polypeptide is not the HCV polypeptide" raises a new matter and newly issue that require further search and consideration.

Furthermore, the newly submitted claims 9-13 and 32-40 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: they are directed to a mosaic polypeptide comprising an antigenic epitope of HCV (claim 9) or NS3 (claim 10), or NS4 (Claim 11 or 12) or NS5 (claim 13) respectively because each of the claims are independent each from other, which indicate each mosaic polypeptide does not or does not necessarily contain more than one epitopes from each of the HCV core, NS3, NS4 and NS5 region. These claims are no longer directed to a mosaic polypeptide comprising an antigenic epitope from each of the hepatitis C virus (HCV) core protein, nonstructural protein 3 (NS3) and nonstructural protein 4 (NS4) as it is claimed in the originally elected group I.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9-13 and 32-40 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the amendment has not been entered, all rejections made in the previous Office action are maintained.

  
JAMES HOUSEL 3/26/03  
SUPERVISORY PATENT EXAMINER  
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